

Dec. 14 1999


MEMORANDUM OF CONSULTATIONS

Delegations representing the Government of the United States of America and the Government of the Commonwealth of Australia met in San Francisco, California, on December 14, 1999, to discuss aviation matters.

The discussions were cordial and productive, and resulted in the delegations reaching agreement, ad referendum, on the text of a diplomatic note to amend the Air Transport Agreement of 1946, as amended, on all cargo air transport. The text of the diplomatic note is attached. Pending entry into force of the amendment, the delegations noted that the aeronautical authorities of both countries intend to implement the provisions of the amendment, on the basis of comity and reciprocity, as of this date.

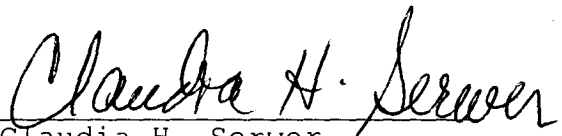
Done in San Francisco, California
December 14, 1999

For the Delegation of the
Commonwealth of Australia



Tony Wheelens

For the Delegation of the
United States of America



Claudia H. Serwer

Attachment

Excellency:

I have the honor to present my compliments and to refer to the Air Transport Agreement between the Government of the United States of America and the Government of the Commonwealth of Australia, with Annex, signed at Washington December 3, 1946, as amended (the Agreement). Noting the mutual interest of our respective Governments in promoting an international aviation system for all-cargo air services that is based upon competition among airlines in the marketplace with minimum government interference and regulation, and our mutual desire to facilitate the expansion of international all-cargo services in order to offer the shipping public the widest variety of services at the lowest price, on behalf of the Government of the United States of America, I have the honour to propose that the Agreement be further amended as follows:

1. The following additional paragraphs shall be added to Article V (Commercial Opportunities) of the Agreement:

7. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Contracting Parties shall be permitted, without restriction to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Contracting Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single through-price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

8. In the performance of all-cargo services under this Agreement, the airlines of both Contracting Parties may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated.

9. In operating or holding out the authorised services on the all-cargo routes, any airline of either Contracting Party may enter into cooperative marketing arrangements such as blocked space, codesharing or leasing arrangements with:

- (a) an airline or airlines of either Party; and
- (b) an airline or airlines of a third country,

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provided that all airlines in such arrangements: (i) hold the appropriate authority, and (ii) meet the requirements normally applied to such arrangements.

2. The existing Annex to the Agreement shall be renumbered as Annex I and shall govern combination services between the United States and Australia.

3. The Annex attached to this note shall be added to the Agreement as Annex II and shall govern all-cargo scheduled and charter services between the United States and Australia.

4. Furthermore, the Agreement between the United States and Australia concerning capacity for the South Pacific, North Pacific and Guam routes, effected by exchange of notes at Washington March 23, 1989, as amended, shall govern capacity by the designated airlines of each Contracting Party only with respect to the agreed routes contained in Annex 1 of the Agreement.

5. In addition, all airlines operating scheduled and/or charter all-cargo services under Annex II shall be considered as designated airlines for the purposes of this Agreement.

6. Finally, with respect to Article V, paragraph 9 of the Agreement:

(a) Notwithstanding that airlines engaging in wet leasing arrangements must have appropriate authority and meet the requirements normally applied, Australian airlines shall be permitted to perform the agreed services using aircraft leased from another airline or airlines, provided the operating aircraft and/or crew comply with the applicable operating and safety standards and requirements and the aircraft proposed to be leased is not from an airline of a third country that, in the view of the United States, raises national security, foreign policy or domestic law issues for the United States; and

(b) In accordance with the provisions of Article V, paragraph 9, the absence of an understanding between either Contracting Party and a third country which permits co-operative marketing arrangements between airlines of one Contracting Party and airlines of that other country shall not preclude the exercise of this entitlement by the airlines of either Contracting Party.

If this proposal is acceptable to the Government of the Commonwealth of Australia, I have the further honor to propose that this note and Your Excellency's note in reply shall constitute an Agreement between our two governments, which shall enter into force upon the date of your note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.



Annex II

Section 1 – General provisions for Scheduled and Charter All-Cargo Air Services

1. Operational Flexibility

The airlines of each Party may, on any or all flights and at their option:

- (a) operate flights in either or both directions;
- (b) combine different flight numbers within one aircraft operation;
- (c) serve behind, intermediate points, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- (d) omit stops at any point or points;
- (e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
- (f) serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services:



without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the Agreement.

2. Capacity

(a) Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by the Agreement and this Annex.

(b) Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

(c) Neither Party shall impose on the other Party's airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Section.



(d) Either Party may require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval. Any requirement for filing must be applied on a non-discriminatory basis, or to enforce the uniform conditions foreseen by paragraph (b) above, or as may be specifically agreed by the Parties. If a Party requires filings, it shall minimise the administrative burdens of filing requirements and procedures on air transportation intermediaries and on airlines of the other Party.

3. Pricing

(a) Each Party shall allow prices for all-cargo air transportation, including to or from third countries, to be established by each airline based upon commercial considerations in the marketplace. Without limiting the application of general competition and consumer law in the territory of each Contracting Party, intervention by the Parties shall be limited to:

- (i) prevent unreasonably discriminatory pricing or practices;
- (ii) protect consumers from pricing that is unreasonably high or restrictive due to the abuse of a dominant position; and
- (iii) protect airlines from pricing that is artificially low because of direct or indirect governmental subsidy or support.

(b) Either Party may require the filing of prices for international air transportation between the territories of the Parties, including for the purpose of implementing a mutual agreement reached under paragraph (c), below. Either Party may require the notification or filing by airlines of the other party of prices charged by charterers to the public, but such requirements must be applied on a non-discriminatory basis. Airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged or charged by:

- (i) an airline of either Party for international air transportation between the territories of the Parties, or
- (ii) an airline of one Party for international air transportation between the territory of the other Party and any other country,

including in both cases transportation on an interline or intraline basis.

(c) If either Party believes that any such price is inconsistent with the considerations set forth in paragraph (a) above, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its

best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

Section 2 – Routes for Scheduled and Charter All-Cargo Air Services

1. Route for airlines of the United States of America:

- (a) From points behind the United States via the United States and intermediate points to a point or points in Australia and beyond;
- (b) Between Australia and any other point or points.

2. Route for airlines of Australia:

- (a) From points behind Australia via Australia and intermediate points to a point or points in the United States and beyond;

- (b) Between the United States and any other point or points.

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